IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.346 OF 2006
AND
WRIT PETITION NO. 357 OF 2006

WRIT PETITION NO.346 OF 2006

SHRI ROHIT RAGHUVIR PAINGANKAR
& OTHERS ... Petitioners.

Versus

SALGAONKAR MINING INDUSTRIES
LTD. & OTHERS ... Respondents.

Mr. Valmiki Menezes, Advocate for the petitioners.

Mr. M. S. Sonak, Advocate for respondent no.1.

Mr. C. Mascarenhas, Advocate for the respondents no.2 to 8.

WRIT PETITION NO.357 OF 2006

RAGHUVIR RAJARAM PAINGANKAR
& OTHERS ... Petitioners.

Versus

SALGAONKAR MINING INDUSTRIES
LTD. & OTHERS ... Respondents.

Mr. C. Mascarenhas, Advocate for the petitioners.

Mr. M. S. Sonak, Advocate for respondent no.1.

Mr. Valmiki Menezes, Advocate for the respondents no.2 to 5.

Coram:- DR. S. RADHAKRISHNAN, J.

Date:- 27th September, 2006.

P.C.

Heard learned Counsel for the petitioners as well as for the respondents. Both the above petitioners are basically challenging the order dated 19.7.2006 passed by learned Civil Judge, Senior Division, Vasco, permitting/ tendering by the respondent/original plaintiff as secondary evidence the following documents :-

i. Extract and Sale Agreement dated 1.7.1964 between original Plaintiff and M/s Shantilal Khushaldas & Bros. Pvt. Ltd.

ii. Letter dated 7th January 1991 from the original Plaintiff's Advocate Mr. D. R. Dukle to the original defendant.

iii. Letter dated 29th June 1992 addressed by the original Plaintiffs Advocate to the original defendant.

iv. Letter dated 29th June 1993 addressed by the original defendant to the original Plaintiffs.

v. Affidavit dated 25th August, 1993 of Mr. Milagres Miranda of Skypak Courier.

vi. Letter dated 10th August, 1990 addressed by the Director of Mines Safety to the Agent, Thatodi Iron Ore Mine.

Both the above petitioners have categorically stated that they are challenging in the petition only with regard to

item (v) hereinabove viz: Affidavit dated 25th August 1993 of Mr. Milagres Miranda of Skypak Courier.

By this order it is clarified that though the learned Civil Judge, Senior Division, Vasco, has admitted the said affidavit as secondary evidence, it is made clear that the same will have to be considered afresh whether the contents of the affidavit will be admissible or not as these issues are kept open so as to enable the Trial Court to take a final decision at the conclusion of trial. The said affidavit at this juncture cannot be treated as secondary evidence. Accordingly, the order stands modified to that extent. Writ Petition stands disposed of. Both the above petitions are disposed of accordingly.

DR. S. RADHAKRISHNAN, J.

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